THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.16734 of 2006

Dated: 25-09-2006

Between:

K. Damodar and another.

..... PETITIONERS

AND

A.P. State Wakf Board, Hyderabad, and others.

.....RESPONDENTS

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ORDER:

The two petitioners claim to be the owners of land in plot Nos.7 to 10 and 39 to 41 admeasuring 2,000 sq. yards comprised in survey Nos.18/1 and 18/2 situated at Trimulgherry. They allegedly purchased the land from M/s Jai Bharat Cooperative Housing Society Limited under an agreement of sale dated 03-03-1983. It appears that the Andhra Pradesh State Wakf Board, respondent No.1 herein, filed suits, being O.S.No.87 of 1999 for perpetual injunction alleging that it leased out the land to a third party and that the petitioners did not allow to occupy the land by the lessee and O.S.No.128 of 1999 for injunction. These two suits were dismissed by the Andhra Pradesh Wakf Tribunal on 12-04-2006. The lessee also filed O.S.No.124 of 1999 for perpetual injunction, which was also dismissed for default. Thereafter, respondent No.2 filed another suit being O.S.No.92 of 2006 - allegedly at the behest of respondent No.1; for perpetual injunction. He also filed I.A.No.462 of 2006 for *ad interim* injunction, the same was dismissed on 22-07-2006. The petitioners allege that even after dismissal of the earlier suits and dismissal of the interlocutory application in the suit filed in 2006, respondent No.1 is trying to interfere with their possession of the land and trying to lease out the land to respondent Nos. 2 and 3. Therefore, they filed the present writ petition seeking a writ of Mandamus directing respondent No.1 not to interfere with their possession and enjoyment of the land and a further direction to respondent No.1 not to lease out the land to third parties.

At the stage of admission itself, respondent No.1 has filed a detailed counter-affidavit. Respondent No.2 is duly represented by counsel, Sri T.S. Praveen Kumar. Heard all the counsel.

Respondent No.1 does not dispute about the earlier proceedings before the Wakf Tribunal. However, it is asserted that the petitioners were never in possession of the land. This is, however, cannot be accepted at this juncture, especially when the suits filed by respondent No.1 and its lessee for perpetual injunction were dismissed by the Wakf Tribunal holding that they are not in possession of the property. The contention that respondent No.2 is still in possession also cannot be accepted because his application, being I.A.No.462 of 2006 in O.S.No.92 of 2006, for *ad interim* injunction has been dismissed by the Wakf Tribunal on 22-07-2006. In this scenario, the petitioners are justified in contending that unless and until respondent No.1 takes action in accordance with law and seeks declaration of title, they cannot be dispossessed. Further it is brought to the notice of this Court that

against the common judgment dated 12-04-2006 in O.S.Nos.87 and 128 of 1999 passed by the Wakf Tribunal, a Civil Revision Petition is filed before this Court under Section 83(9) of the Wakf Act, 1995, to which petitioner No.1 is a party. Therefore, unless and until respondent No.1 obtains appropriate orders in the said CRP and appropriate action is taken, the petitioners cannot be dispossessed. For further grievance, the petitioners may approach the Wakf Tribunal in O.S.No.92 of 2006 and obtain appropriate orders.

The writ petition, with the above observations, is accordingly disposed of. No costs.

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(**V.V.S.RAO, J**)

25th September, 2006
ghn